

Response to Office Action
SN 10/772,973
Customer No. 33354

REMARKS

A. Status of the Claims

Claims 1-33 are pending. Claims 1-33 have been rejected based on prior art and claims 3, 9, and 22 have been rejected as being indefinite. Claims 1, 3, 7, 9, 20, 22, and 33 have been amended as described herein.

B. Amendments to the Specification

Applicants submit replacement paragraphs 0001 and 0002 to place the continuation data of the application within the first paragraph and to correct the typographical error noted by the Examiner. Replacement paragraph 0005 is being submitted to correct the typographical error noted by the Examiner.

C. Amendments to the Abstract

Applicants have amended the abstract as requested by the Examiner.

D. § 112 Rejections

The Examiner has rejected claims 3, 9, and 22 as being indefinite under 35 USC § 112 (2nd Paragraph). Specifically, the Examiner notes that these dependent claims cite the first beam as being "red" while the base claim (claim 1) limits the first beam as being "cool."

Applicants appreciate the Examiner's detailed reading of the claims. Applicants have amended these claims to reflect that the second laser beam is red, a warm color.¹

¹ No new matter is added by this amendment. See paragraph 0016 of the specification as filed.

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E. Provisional Double Patenting Rejection

The Examiner has provisionally rejected claims 1, 3-7, 9-15 and 33 under the judicially created doctrine of obviousness-type double patenting over claims 1, 2, 13, 14, 16-18, 23, 26, 27 and 29 of co-pending Application No. 10/612,504.

Because this double patenting rejection is provisional, Applicants are not prepared to file a terminal disclaimer or argue against the rejection until one of the applications issues. At that time, Applicants will formally address this issue in the remaining application that has not issued.

F. § 102 Rejections Citing Gerdes

The Examiner has rejected claims 1-19 and 33 under 35 USC §102(b) as being anticipated by U.S. patent 6,267,779 to Gerdes (Gerdes). A claim is anticipated only if each and every element as set forth in the claim is found, either expressly or inherently described, in a single prior art reference.

Verdegaal Brothers, Inc., 2 USPQ2d at 1053.

Gerdes does not disclose, either expressly or inherently, that the laser sources may be in the wand. Gerdes discloses that the laser sources are housed in a cabinet and that the laser beam is carried to the wand by means of a fiber optic cable. See Fig. 1, which illustrates the fiber optic cables attached to the cabinet and Fig. 4, which illustrates the laser sources attached to the fiber optic cables. See also column 5, line 14, column 8 lines 23-25, and column 9 lines 54-59 which disclose that the laser beams are transmitted to the wands via fiber optic cables, and that the laser sources are in the cabinet.

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In contrast, Applicants' preferred embodiment provides that the laser sources are mounted within the wand. Applicant has amended independent claims 1, 7, and 33 to clarify that the laser sources are in the wand². Therefore, Gerdes does not claims 1-19 and 33 because Gerdes does not disclose one of Applicants' claimed structural elements, namely that the laser sources are in the wand and Applicants respectfully request that this rejection of independent claims 1, 7, and 33 be withdrawn. Additionally, the Examiner is requested to withdraw this rejection as it applies to dependent claims 2-6 and 8-19 due to their dependency on allowable base claims.

G. § 103 Rejections Citing Gerdes and Tatebayashi, et al.

The Examiner has rejected claims 20-32 under 35 USC §103(a) as being obvious in light of Gerdes in view of U.S. Patent No. 5,150,704 to Tatebayashi et al. (Tatebayashi). A claim is *prima facie* obvious only if the prior art reference (or references when combined) teach or suggest all the claim limitations. *MPEP* §2143.

Neither Gerdes nor Tatebayashi discloses or suggests the use of an arm that houses a plurality of laser energy sources on a stand-alone device. Instead, both Gerdes and Tatebayashi disclose hand-held devices with wand members that emit laser light.

In contrast to Gerdes and Tatebayashi, one embodiment of the present invention is a stand-alone device that places laser emitting devices within an

² No new matter is added by these amendments as laser energy sources (11 and 12) are shown in the wand in Figs. 1-2.

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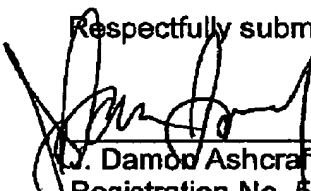
arm. To clarify the feature, Applicants have amended claim 20 to recite "an arm which houses the plurality of laser energy sources."³ Therefore, amended Claim 20 is not obvious in light of Gerdes and Tatebayashi because those patents fail to suggest the use of an arm that houses a plurality of laser energy sources. The Examiner is requested to withdraw this rejection of claim 20 and claims 21-32 based on their dependency upon an allowable base claim.

CONCLUSION

Applicants respectfully submit that all the rejections have been traversed, and that the application is in form for issuance. If the Examiner has any suggestions or comments that would place the application in even better form for allowance, he is invited to call Applicants' representative, Damon Ashcraft at 602-681-3331.

9/12/05
Dated

Respectfully submitted,


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³ No new matter is added by way of this amendment as this feature is discussed in paragraph 0025 and shown in Fig. 7 of the specification as filed.